

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

David Richard Walker, Jr., #188417)	C/A No. 8:16-817-JMC-JDA
)	
Plaintiff,)	
)	REPORT AND RECOMMENDATION
vs.)	
)	
Brian "Jay" Koon, Sheriff;)	
Kevin Jones, Major,)	
<i>both of Lexington County Sheriff's Dept. e.g.)</i>)	
<i>Lex. County Detention Center,</i>)	
)	
Defendants.)	
)	

David Richard Walker, Jr. ("Plaintiff"), proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1983. Plaintiff is detained in the Lexington County Detention Center ("LCDC"), and he files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint is subject to summary dismissal.

BACKGROUND

Plaintiff alleges he brings this action on behalf of past, present, and future LCDC inmates. [Doc. 1.] He alleges he has been in the LCDC for three years, so he is a witness to the problems. [Id.] He contends the LCDC fails to provide enough stamps, envelopes, paper, and writing pens for proper and adequate access to the courts. [Id.] He contends LCDC provides two envelopes per week and four sheets of paper. [Id.] Plaintiff alleges the indigent kit or pack provided to the detainees is incomplete because it only contains a pencil and a pen is needed to litigate properly in the courts. [Id.]

He explains that the South Carolina court rules require all documents to be written in black ink; thus, he needs pens. [Id.] And, he alleges he needs large envelopes because the South Carolina rules require that materials not be bent. [Id.] He also alleges that the

government should pay postage pre-paid for all indigent litigants “whom are in need to access the courts, or are incompetent or disable[d] and need to access a[n] advocate of their choice.” [*Id.*]

And, Plaintiff alleges the detainees need access to “legal-representatives such as (the) governor, public officials officiating acting in official capacity etc. And such as legal-representatives to the — disable, incompetent, etc.” [*Id.*]

Plaintiff contends he is representing himself in a pending state criminal matter. [*Id.*] He seems to contend that he lacks sufficient paper and envelopes to contact an advocate to act on behalf of his disabilities. [*Id.*] He further contends he is in need of pens and massive amounts of paper to file an appeal and motion. [*Id.*] Plaintiff seeks for all indigent litigants to be provided sufficient: black ink pens; lined legal paper; large and standard size envelopes; and postage. [*Id.*] He requests that all indigent litigants shall enjoy their constitutional rights. [*Id.*]

STANDARD OF REVIEW

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C. § 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C.

§ 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court is charged with screening Plaintiff's lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

As a pro se litigant, Plaintiff's pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff's legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

DISCUSSION

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Although Plaintiff alleges that certain policies at the Lexington County Detention Center are unconstitutional, Plaintiff lacks standing to bring this action. Plaintiff seeks to challenge the alleged policies on behalf of all detainees. However, the pro se Plaintiff lacks standing to sue on behalf of other detainees. See *Hummer v. Dalton*, 657 F.2d 621, 625-626 (4th Cir. 1981) (a prisoner cannot act as a “knight-errant” for others); *Oxendine v. Williams*, 509 F.2d 1405, 1407 & n.* (4th Cir. 1975) (a pro se prisoner unassisted by counsel cannot be an advocate for others in a class action); *Inmates v. Owens*, 561 F.2d 560, 562-563 (4th Cir. 1977) (one pro se inmate does not have standing to sue on behalf of another inmate); see also *Myers v. Loudon Cnty. Pub. Sch.*, 418 F.3d 395, 401 (4th Cir. 2005) (finding that a pro se person’s right to litigate for *oneself* does not create a similar right to litigate on behalf of others). Accordingly, this action should be dismissed due to Plaintiff’s lack of standing to represent others.

Additionally, to the extent Plaintiff alleges that his personal right of access to the courts has been violated, he fails to state a plausible claim on which relief may be granted. Although the Court must liberally construe the pro se Complaint and Plaintiff is not required to plead facts sufficient to prove his case as an evidentiary matter in the Complaint, the Complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)); see also *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (explaining that a plaintiff may proceed into the litigation process only when his complaint is justified by both law and fact).

There is a constitutional right for meaningful access to the courts to bring challenges to sentences or conditions of confinement. See *Lewis v. Casey*, 518 U.S. 343, 351 (1996); *Giarratano v. Johnson*, 521 F.3d 298, 305 (4th Cir. 2008). However, it is well settled that to state a cognizable claim for denial of meaningful access to the courts a prisoner must allege specific actual injury resulting from the alleged denial. *Id.* at 349–53 (1996) (holding that an inmate alleging denial of access to the courts must be able to demonstrate “actual injury” caused by the policy or procedure in effect at the place of incarceration in that his non-frivolous legal claim had been frustrated or was being impeded). In this case, Plaintiff does not allege any specific facts as to how a non-frivolous legal claim has been adversely affected due to the alleged denial of pens, and more papers, stamps, and envelopes. His allegation that the South Carolina rules require black ink and materials to be unbent is not an allegation of a personal injury. Therefore, Plaintiff fails to state a plausible claim.

RECOMMENDATION

It is recommended that the District Court dismiss this action without prejudice and without issuance and service of process. See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal). Further, it is recommended that Plaintiff's motion seeking appointment of counsel [Doc. 3] be denied as moot. **Plaintiff's attention is directed to the important notice on the next page.**

April 14, 2016
Greenville, South Carolina

S/Jacquelyn D. Austin
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).